



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 679

IN THE MATTER  
OF  
MARY JANE SAKSA

## DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Mary Jane Saksa pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 26, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Saksa. The Commission has concluded its inquiry and, on April 16, 2003, found reasonable cause to believe that Saksa violated G.L. c. 268A, § 23(b)(2) and (b)(3).

The Commission and Saksa now agree to the following findings of fact and conclusions of law:

### -Findings of Fact-

1. Mary Jane Saksa serves as the Director of the Substance Abuse Program ("Program") for the Worcester County Sheriff's Office.
2. As the Program Director, Saksa supervises approximately 18 subordinates, who serve as substance abuse counselors, treatment managers, job developers (for inmates and those on probation), and support staff.
3. Between April 1998 and March 2001, Saksa worked part-time, on her own, as a regional sales representative for Excel Communications, Inc., a private company that provides telephone, telecommunication and e-commerce services through its independent representatives. Excel has a sales/commission arrangement whereby its representatives have their own field offices to sell Excel's long distance telephone service while also recruiting people to become Excel representatives and start their own field offices. Representatives make between \$35-145 for each person they recruit to become representatives. Representatives also earn commissions each time a person to whom they, or representatives they recruited, have sold Excel's long-distance service places a long-distance call.

4. During the time she was working as an Excel representative, Saksa solicited several of her Sheriff's Office subordinates as to whether they had an interest in becoming Excel representatives and/or whether they wanted to switch their long distance telephone service to Excel.

5. Some subordinates Saksa solicited did not have a prior social and/or business relationship with her. These subordinates have stated that they felt pressured by Saksa to become involved with Excel because Saksa was their supervisor. Others stated that they did not feel pressured to join Excel.

6. In total, between April 1998 and March 2001, Saksa received \$1,320 in compensation related to her Excel solicitation of sheriff department subordinates with whom she did not have a substantial prior social and/or business relationship.

#### **-Conclusions of Law-**

7. Section 23(b)(2) prohibits a state employee from knowingly or with reason to know using her position to obtain for herself or others unwarranted privileges of substantial value not properly available to similarly situated individuals.

8. As Worcester County Sheriff's Office Director of Substance Abuse Programs, Saksa is a state employee, as that term is defined in G.L. c. 268A, § 1.

9. By soliciting subordinates with whom she did not have a substantial prior social and/or business relationship to become associated with Excel, Saksa knew or had reason to know that she was using her official position to initiate a business relationship with a subordinate employee.

10. Such a business relationship is an unwarranted privilege in this case because Saksa initiated the relationships as noted above and because her subordinates' decisions to become associated with Excel were not entirely voluntary. In fact, such decisions will rarely be voluntary because they will be influenced, and were so influenced in this case, by the inherently exploitable nature of the relationship between a supervisor and her subordinates. Saksa's solicitation of a business relationship under the above conditions was also not properly available to similarly situated individuals.

11. The amount of compensation that Saksa received from her soliciting these subordinates to join Excel was \$1,320 and therefore of substantial value.

12. Thus, under the totality of the circumstances, by using her official position as the Worcester County Sheriff's Office Director of Substance Abuse Programs to secure for herself an unwarranted business relationship with her subordinates to become Excel representatives and/or to purchase Excel products whereby she personally profited by \$1,320, Saksa violated G.L. c. 268A, § 23(b)(2).

13. Section 23(b)(3) prohibits a state employee from knowingly, or with reason to know, acting in a manner that would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy her favor in the performance of their official duties, or that she is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.<sup>1</sup>

14. By supervising subordinates that she had solicited to become Excel representatives and/or to purchase Excel products, without disclosing these facts, Saksa, knowingly or with reason to know, acted in a manner that would cause a reasonable person, having knowledge of all the relevant circumstances, to conclude that her subordinates could unduly enjoy Saksa's favor in the performance of her official duties. Therefore, in so acting, Saksa violated G.L. c. 268A, § 23(b)(3) on each occasion.

### **-Resolution-**

In view of the foregoing violation of G.L. c. 268A by Saksa, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Saksa:

(1) that Saksa pay to the Commission the sum of \$1,000 as a civil penalty for her conduct in violating G.L. c. 268A, § 23(b)(2) and 23(b)(3);

(2) that Saksa disgorge the economic benefit she received by violating G.L. c. 268A, § 23(b)(2) and 23(b)(3), namely the \$1,320, compensation she earned; and

(3) that she waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 24, 2003

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<sup>1</sup> Section 23(b)(3) provides, in part, that it "shall be unreasonable to so conclude if such officer or employee has disclosed in writing to her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion." Saksa made no such disclosure. The law's provision for advance written disclosure to dispel the appearance of a conflict of interest is not a technical requirement. It causes the public employee to pause and, in this case, to reflect whether she should pursue a private business relationship with a subordinate. Importantly, the written notice also gives the appointing authority the opportunity to

consider the issues and to take appropriate action. Where there are serious '23 appearance concerns such as in the present case, it seems likely that an employee will not initiate such a relationship, or if timely disclosure is made, she will be directed by her appointing authority to avoid such a relationship or, at least, first seek legal advice.